

FILED

**AUG 11 2008 UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

**RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**MOTION, PURSUANT TO SECTION 2255 OF TITLE 28
UNITED STATES CODE**

ATTACKING A SENTENCE IMPOSED BY THAT COURT

**UNITED STATES OF AMERICA
VS. Plaintiff**

CV 08

3835

MHP

Anthony R. Turner, #G-21511
Defendant

(name of movant)
(Full name under which you
were convicted)

E-filing

CASE NO.

(To be supplied by the
Clerk of the District Court)

Superior Ct. Case No. CR 006-8004 / CR 06-6918

(PR)

INSTRUCTIONS-READ CAREFULLY

In order for this motion to receive consideration by the District Court, it shall be in writing (legibly handwritten or typewritten) by the Movant, under penalty of perjury, and it shall set forth in concise form the answers to each applicable question. If necessary, Movant may finish his answer to a particular question on the reverse side of the page or on an additional blank page. Movant shall make it clear to which question any such continued answer refers.

Since every motion under Section 2255 of Title 28, United States Code, must be made under penalty of perjury, any false statement of a material fact therein may serve as the basis of prosecutions and conviction for perjury. Movant should therefore exercise care to assure that all answers are true and correct.

If the motion is made in forma pauperis, it shall include an affidavit (page 6 of this form) setting forth information which establishes that the Movant will be unable to pay the fees and costs of the 2255 proceedings. When the form is completed, the original and 2 copies shall be mailed to

I have been denied
Access to copies by
D.U.I. Prison staff
PLEASE return
Filed copy
Thank you
Clerk

540

08-3835-MHP

the Clerk of the District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102

1. Place of detention DEUEL Vocational Institution, P.O. Box #600, Tracy, CA, 95378-0600

2. Name and location of Court which, and name of judge who, imposed sentence Superior Court of Calif. County of Yolo, 725 Court Street, Dept. #5, Woodland, Calif. 95695

3. The indictment number or numbers (if known) upon which the offense or offenses for which sentence was imposed..

- (a) Alleged Possession of Drug Paraphernalia §§11377(a), 4140(b) P.C.
 (b) _____
 (c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

- (a) (July 24/2008) - Sentence to (2yrs, 8mos.) with (2yrs, 4-mos.) time served - Already done.
 (b) _____
 (c) _____

5. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
 (b) after a plea of not guilty _____
 (c) After a plea of nolo contendere (c) ✓

6. If you were found guilty after a plea of not guilty, check whether that finding was made by

- (a) a jury _____
 (b) a judge without a jury (b) ✓

7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes

8. If you answered "yes" to question 7, list

(a) the name of each court to which you appealed:

I Superior Court of Calif. County of Yolo Dept. #5, #111, Woodland, CA.
 11 Court of Appeal in 3rd Appellate Dist. Sacramento, 900 N. Street,
 111 _____

(b) the result of each such court to which you appealed:

I Denied
 11 Denied
 111

(b) the date of each such result:

I
 11
 111

(c) If known, citations of any written opinions or orders entered pursuant to such results:

I NONE CITED
 11 NONE CITED
 111

9. State concisely the grounds on which you base your allegation that the sentence which was imposed on you is invalid.

(a) "Denied Due Process" and "Equal Protection" of Law in my UNLAWFUL ARREST WITHOUT PROBABLE CAUSE NOR SUSPICION VIOLATED MY 4TH, 5TH, 6TH, 13TH AND 14TH AMEND. RIGHTS

(b) DENIED DUE PROCESS OF LAW AND EQUAL PROTECTION IN DENIAL OF RIGHT TO SPEEDY TRIAL BY ARREST DELAY AND WAS ILLEGALLY RESTRAINED IN SHERIFF'S CUSTODY OF YUMA COUNTY, FOR 17 DAYS WITHOUT ARRAIGNED BEYOND 48-HR. STATUTE REQUIREMENTS. VIOLATED MY 5TH AND 14TH AMEND. RIGHTS,

(c) DENIED COMPLETE DUE PROCESS OF LAW TO FAIR, IMPARTIAL TRIAL BY WAY OF CUMULATIVE PREJUDICE OF (6) SIX INEFFECTIVE COURT APPOINTED COUNSEL(S) TO MY CASE, AS WELL AS (5) DIFFERENT PROSECUTORS VIOLATED MY 5TH, 6TH, 13TH AND 14TH AMEND. RIGHTS, AND CAL. CONST. ART. 2, § 15, 17

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) ON (12/11/06) DEFENDANT WAS DEPRIVED FEDERAL DUE PROCESS & EQUAL PROTECTION RIGHTS DURING ARREST, WITHOUT AN WARRANT, NOR PROBABLE CAUSE NOR REASONABLE SUSPICION IN VIOLATION OF U.S. CONST. AMENDS. 4TH, 5TH, 6TH, 13TH AND 14TH

(b) ON (12/11/06) DEFENDANT WAS DEPRIVED FEDERAL PROTECTED DUE PROCESS AND EQUAL PROTECTION RIGHTS TO A FAIR AND IMPARTIAL TRIAL BY WAY OF INEFFECTIVE ASSISTANCE OF COUNSEL(S) - SIX WERE APPOINTED AND BY MALICIOUS PROSECUTION - (5) DIFFERENT PROSECUTORS(S) APPOINTED TO MY CASE AND VIOLATED MY RIGHTS OF U.S. CONST. AMENDS. 5TH, 6TH AND 14TH

(c) ON (12/11/06) DEFENDANT WAS DEPRIVED FEDERAL PROTECTED DUE PROCESS OF LAW AND EQUAL PROTECTION RIGHTS BY WAY OF PRE-ARREST DELAY

AS WELL AS ARRAIGNMENT DELAY AND FAILURE TO BRING DEFENDANT BEFORE A MAGISTRATE FOR (17-DAYS) OF ILLEGAL RESTRAINT/ DETENTION BEYOND (18 HR) REQUIREMENT STATE AND FEDERAL LAW STATUTES. VIOLATED MY RIGHTS OF U.S. CONST. AMENDS. 5th, 6th AND 13th, AND 14th.

11. Have you previously filed petitions for habeas corpus motions under section 2255 of Title 28, United States Code, or any other applications, petitions or motions with respect to this conviction?

"NO"

12. If you answered "yes" to (11), list with respect to each petition, motion or application

(a) the specific nature thereof:

I Notice of Appeal and writ of Habeas Corpus
 11
 111

(b) the name and location of the court in which each was filed:

I Yolo County Superior Court #725 Court St. (Rm 111), Woodland, CA. 95695
 11 Sacramento County 3rd Appellate Court of Appeal, 900 N St, SACRA, CA. 95814
 111

(c) the disposition thereof:

I denied
 11 denied
 111

(d) the date of each disposition

I 7/107
 11 7/107
 111

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

I NONE
 11 NONE
 111

13. Has any ground set forth in (9) been previously presented to this or any other federal court by way of petition for habeas corpus, motion under section 2255 of Title 28, United States Code, or any other petition, motion or application?

NONE, I ONLY HAVE 81983 ACTIONS PENDING "NO" PETITIONS NOR WRITS

14. If you answered "yes" to (13), identify

(a) which grounds have been previously presented:

I SAME GROUNDS in this Petition
 11 SAME GROUNDS in this Petition
 111

(b) the proceedings in which each ground was raised:

I Direct Appeal / Superior Court
 11 3rd Appellate Review / 3rd Appellate Court
 111

15. Were you represented by an attorney at any time during the course of (Yolo County Public Defenders)

(a) your arraignment and plea? (2) ineffective Counsel(s) J. Klopestien, & Amber Bellante

(b) your trial, if any? (4) ineffective Counsel(s) J. Spangler, Jeff Raven, J. Tenney, R. Beede

(c) your sentencing? SAME (6) - ineffective attorneys

(d) your appeal, if any, from the judgment of conviction of the imposition of sentence?
NO COUNSELS REFUSED TO FILE APPEAL NOR ACT IN MY INTEREST. I FILED APPEAL (IN PROPER)

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? (IN PRO PER) (NO ATTORNEY ASSISTANCE)

16. If you answered "yes" to one or more parts of (15), list

(a) the name and address of each attorney who represented you:

1 J. Klopestien, & Amber Bellante, 814 North St., Woodland, Ca. 95695

11 J. Spangler, Jeff Raven, J. Tenney 430 Lincoln Ave., Woodland, Ca. 95695

111 Rodney Beede

WHEREFORE, movant prays that the Court grant movant relief to which he may be

entitled in this proceeding.

Signed under penalty of perjury

8/3/08
 Date

Anthony R. Turner at Taney, Ca. 95378-0600
Anthony R. Turner
 Signature of Movant

Contin. Pg. 3 (Paragraph 10)

Petitioner/Defendant (Anthony R. Turner) Complaining of Respondent/Plaintiff (U.S.A.). Alleges as follows;

- (1). This is an Action brought by (Petitioner/Defendant) against the (Respondent/Plaintiff) who in their individual and representative capacities, illegally caused (him) to be imprisoned at the (D.V.I. Prison Deuel Vocational Institution Correctional Facility for a period of (893+ days) time served beyond the maximum expiration date of 80% of (2 yrs. 8 months) imposed of (his) (32-month) sentence, completed (3 1/2) months over required time to be served.
- (2). The (Petitioner/Defendant) in this Action is seeking Declaratory Relief and Damages for violation of (his) Federally Protected Rights, Privileges and immunities Secured under the 8th, 9th, 13th and 14th Amendments to the United State Constitution and by tit. 28 U.S.C. §§ 2255, 2241, 1331, 1343(3), (4), 2201, 2202.
- (3). The Jurisdiction of this Court arises under 28 U.S.C. §§ 2255, 2241, 1331, 1343(3), (4), 2201-2202.
- (4). The (Petitioner/Defendant) is a Citizen of the United States born in Woodland, Ca. 95685 and resides in the (County of Yolo) and (State of California) from (Dec. 11-2006) through (Aug. 3, 2008) those time being relevant to the Causes of Action pleaded herein, (Petitioner/Defendant) resided at the Monroe Detention Center Jail in the Sheriff's Dept. of Yolo County at 2420 East Gibson Rd., Woodland, Ca. 95766, located

in the (County of Yolo) within the Territorial Jurisdiction of this Court.

(5).- The (Respondent/Plaintiff) Yolo County Superior Court and Yolo County Sheriff's Dept. et al. are employed by (U.S. Government) in (Calif.) to do Business in the (City of Woodland) as Municipal Corporations under Color and Pretense of Authority of Law for the (State of California).

(6).- The (Respondent/Plaintiffs) (Warner) (S. Basha) (H. Johnson) is Employed by the (County of Yolo) as Municipal and Superior Court Judges, for the (State of Calif.) are relevant at all times, acted in their Lawful Capacities.

(7).- The (Respondent/Plaintiffs) Jeff Resig and his Deputy D.A.'s Eichele, R. Trudgere, Wallace, et al. acted in their Individual and Official Capacities to (Maliciously/Vindictively) Prosecute Petitioner/Defendant, are Employees for the Yolo County D.A.'s Office, for the (State of Calif.) are relevant at all times, acted in their lawful Capacities.

(8).- The (Respondent/Plaintiff) Ed G. Prieto, et al. is Employed as the Yolo County Sheriff of the Yolo County Sheriff's Dept., and (he) and (his) subordinates are responsible for (Petitioner/Defendant's) illegal Detainment and Arrest delay for (17-days) in custody without being arraigned from (12/11/06) through till (12/28/06), and additional injuries, Larceny of Cash, Jewelry and Personal Property without "Due Process", while

in (Bailment/Conversion) of Yolo County Sheriff's Dept. and at all times is relevant to these proceedings and Cause of illegal Restraint.

- (9) - The (Respondent/Plaintiff) Lucas D. Spence ^{#870} on (12/11/06) was the Police Officer who unlawfully Arrested (Petitioner/Defendant) by unlawful means without Probable Cause nor Suspicion nor of legal Cause for (his) arrest. (Lucas D. Spence) was a Employee of the (Yolo County) (Woodland City Police Dept.) for the (State of Calif.). Did willfully knowingly Commit Perjury on the Police Report and under oath of the Court that gave rise to the false arrest and Indictment of (Petitioner/Defendant) on Misdemeanor Charges. §§ 1377(A), 4140(6) P.C.

- (10) - The Police officer (Lucas D. Spence ^{#870}) on (July, 13, 2007) was fired from the Woodland Calif. Police Dept. had an Internal Affairs investigation of (his) misconduct involving (Petitioner/Defendant's) unlawful Imprisonment arrest and Detainment on (12/11/06) which was Based on (his) False Probable Cause Report used to arrest and Detain (Petitioner/Defendant).

- (11) - Officer (Lucas D. Spence) had a long History of Unbecoming Conduct on and against Yolo County Citizens, with Complaints Filed against (him), but was rehired by Yolo County Sheriff's Dept. (6 months) after being fired from Woodland City Police Dept. in Yolo County, at all times herein (he) is relevant to this

initial Cause of Action) who took \$1,250.⁰⁰ Dollars worth of Cash Jewelry and Personal Property off (Petitioner/Defendant's) Person and kept it, and did not transport it to the Yolo County Sheriff's Dept Jail where (Petitioner/Defendant) was Detained, Said Valued Cash Property and Jewelry was never returned.

- (12).- On (July, 24, 2008) (Petitioner/Defendant) was forced to Plead Due to Ineffective Counsell(s) of Six appointed and was legally incarcerated at (D.V.I.) Deuel Vocational Institution Prison facility by "Special" transport, issued by the (Superior Court of Yolo County Dept. 5) of the (State of California), following (his) unlawful Conviction. (July, 24, 2008)
- (13).- The Legally imposed Sentence of the (Petitioner/Defendant) at 80% of (2 yrs. 8 mos.) expired (June, 11, 2008).
- (14).- As a result of the Intentional Conduct, the reckless Conduct or grossly negligent Conduct of the Defendant(s) herein, the (Petitioner/Defendant) was detained at a Over-Crowded (D.V.I.) facility Deuel Vocational Institution Prison, under Inhumane Conditions of (1500-inmates beyond it 3,500 Housing Capacity, of inmates, which (he) has been denied Fed. "Due Process" Rights to Classification for Parole Release, beyond (his) Maximum expired Parole Date (June, 11, 2008) which

(he) has served (30-months) of the (32-mos.) imposed by the Court at 80%, which has exceeded his Parole date by at-most (3-mos.)

(15)- (Petitioner/Defendant) is currently being held at (D.V.I.) Prison Deuel Vocational Institution (illegally and unlawfully) (3-months) beyond (his) required Parole Date, in violation of (his) Federal Protected Constitutional Rights to "Liberty" until date of immediate release, (90-days) after the Maximum 80% expiration Date of his (2yr. 8-month Sentence). He has served 2yr. 5-months of that Sentence 893-days. till this Day.

(16)- Immediately upon receiving this Information (Petitioner/Defendant) prior to the Maximum expiration date of (his) Sentence on (June 11, 2008) of receiving information, the (Petitioner/Defendant) sent written NOTICES to the (D.V.I.) (Warden Steve Moore) (CCII - S. White), (P.A. - B. Leuth) Employee official(s) in charge at Deuel Vocational Institution Prison, protesting illegal Restraint and error "exceeding my Parole date by (3-months) on 80% $\frac{1}{3}$ Time Served."

(17)- When (Petitioner/Defendant's) maximum expiration Date passed without (his) being released from (D.V.I.) Prison Deuel Vocational Institution, (He) sought a Judgment releasing (him) from custody purb.

to this §2255 Petition for relief.

- (18).- Upon Information and belief, the failure of Communications which led to improper computation of the (Petitioner/Defendant's) Sentence is Institutional in nature and Matter of Policy, Cal. Pen. C. §§ 2931.-2934, Cal. Pen. Codes §§ 2900.5(e), 4019(a)(1),(b),(c), as there exist "no" System by which Jail time served computation of a Local Sentence is communicated to State authorities.
- (19).- The (Respondent/Plaintiff's) named as representatives and officials of Elb County are responsible for implementing Cal. Pen. Codes §§ 2931.-2934, 2900.5 and 4019(a)(1),(b)(c). in a manner consistent with the requirements of all relevant Statutes and the United States Constitution.
- (20).- The failure of named (Respondent/Plaintiff's) to implement the Law, has violated the (Petitioner/Defendant's) Fed. Protected Rights under the Statutes of the State of California and under the United States Constitution.
- (21).- The (Respondent/Plaintiff) were under an affirmative legal duty to properly compute (Petitioner/Defendant's) maximum expiration Date and release (him) thereon.
- (22).- The (Respondent/Plaintiff's) named, upon information and belief, their failure to release (Petitioner/Defendant's) was occasioned by their total disregard, whether intentional, reckless or grossly negligent in nature, of (his) Claims that (his) maximum expiration Date was (June 11, 2008) and is still

illegally Continued (8/3/08).

(23) - As a result of the foregoing the (Petitioner/
-Defendant) was deprived of (his) right to be
free of excessive Punishment under the
8th Amend. of the United States Constitution
and the Substantive and Procedural "Due
Process" guaranteed under the 5th and 14th
Amends. of the U.S. Const.

(24) - Wherefore, the (Petitioner/Defendant)
demands Judgment of Declaratory Relief
and Damages \$5,000.⁰⁰ Dollars and a
\$120.⁰⁰ Dollars for Each Day that I Continue
to be Continued beyond my Statutory Required
Release date (June, 11, 2008), in
addition to the costs and disbursements of
this Action, along with Reasonable Att-
orneys Fees. For prosecution thereof.
Date: (Aug. 3, 2008)

Anthony R. Turner
Anthony R. Turner
IN PRO PER

EXHIB.

#A

CRIME SUMMARY INFORMATION

PROBABLE CAUSE DECLARATION

BOOKING NUMBER:	CASE NUMBER: WDP06-008004
ARRESTEE (LAST, FIRST, MIDDLE): TURNER, ANTHONY RICHARDO	DATE OF BIRTH: 5/15/1962
ADDRESS: 449 WEST ST	
BOOKING CHARGES: 11377 (A) H&S/4140-B&P	SUPPLEMENTAL HOLDS:
DATE/TIME OF ARREST: 12/11/2006 00:00	48 HOUR EXPIRATION DATE/TIME: 12/13/2006 00:00
ARRESTING AGENCY: WOODLAND PD	ARRESTING OFFICER(S): LSPENCE, #870

FACTS ESTABLISHING PROBABLE CAUSE FOR ARREST

On 12-11-2006 I contacted turner in the parking lot of the Dunton Motel in Woodland. Turner told me he was on parole out of Yolo County. I completed a parole search of Turner. I located a hypodermic syringe with a small amount of a clear substance in it in turner's left pant's pocket. Ofc. Flores transported the syringe to the Woodland Police Department where he tested the substance inside the syringe with a DOJ test kit. The substance inside the syringe tested positive for the presence of methamphetamine. Prior to testing the substance, Ofc. Flores observed the clear substance inside the syringe was at the 8cc. line on the syringe. I transported Turner to the Yolo Parole office where agent Modesto filled out a 3056 PC form. I transported Turner to the Yolo County Jail where he was booked on one count of 11377(a) H&S, 3056 PC hold and one count of 4140 B&P.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Executed on **Monday, December 11, 2006** in Yolo County, California.

By: **LSPENCE** Agency: **Woodland PD** Badge Number: **870**

Signature: *[Signature]*

I read the above facts establishing probable cause to Judge _____ on _____ at _____ ☐ A.M. ☐ P.M. and the Judge determined that there ☐ is / ☐ is not probable cause to believe this arrestee has committed a crime.

I declare under penalty of perjury that the foregoing is true and correct.

By: _____ Badge Number: _____ Date: _____ Time: _____

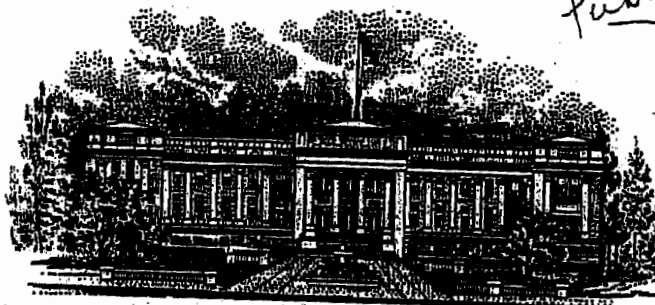
Signature of Deputy Sheriff: _____

SUPERIOR COURT

Of the State of California for the
County of Yolo

Court Services
Appellate Division

725 Court Street, Room 103
Woodland CA 95695
(530) 406-6709



*Public
Defender*

JFK

March 28, 2007

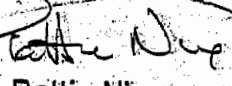
Anthony R. Turner #0610061
2420 E. Gibson Rd, AZ-111 Adseq
Woodland, CA 95776

Re: Notice of Appeal

Dear Mr. Turner:

~~I am returning your~~ Notice of Appeal – Misdemeanor as we have no record of a case #CR 06-8004. Nor do I find a judgment date of 2-26-07 for you. A copy of your notice and this letter is also being sent to the Public Defender's office.

Thank you.


Pattie Nix
Appeals Clerk

RECEIVED

AUG 07 2007

**OFFICE OF THE CLERK
SUPREME COURT, U.S.**

1 Klopfenstein.

2 MR. KLOPFENSTEIN: Okay.

3 THE COURT: You may proceed, Mr. Klopfenstein.

4 MR. KLOPFENSTEIN: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. KLOPFENSTEIN:

7 Q Officer, you testified that you were a cover unit
8 for two other officers that were at the Dunton Motel,
9 would that be true?

10 A Three officers.

11 Q Three officers that were at the Dunton motel?

12 A Yes, I was.

13 Q And that particular call where those three other
14 officers were investigating some sort of incident did not
15 relate to Mr. Turner; isn't that true?

16 A Yes.

17 Q In fact, you saw Mr. Turner with another person
18 standing down the street next to a car; isn't that right?

19 A No.

20 Q Where did you see Mr. Turner first time?

21 MR. EICHELE: I would object as relevant.

22 THE COURT: I'm going to overrule.

23 THE WITNESS: Standing in the same parking lot.

24 BY MR. KLOPFENSTEIN:

25 Q The police report that you prepared in this matter
26 indicates that Officer Flores and Officer Lara were
27 contacting quote, several subjects, correct?

28 A Yes.

1 Q Those contacts with Mr. Turner, was one of those
2 subjects that was being contacted?

3 A No, he was not.

4 Q So he was in the parking lot of the Dunton Motel
5 when you first saw him; is that correct?

6 A Yes, he was.

7 Q And where was he specifically?

8 A On the east side of the parking lot.

9 Q What was he doing?

10 A Standing in front of a vehicle with Hispanic male
11 with the hood open.

12 Q Okay. At that point was he doing anything illegal?

13 A No, he was not.

14 Q Did you suspect him of being involved in any sort
15 of criminal activity at that point?

16 A No, I did not.

17 Q Did you know that he was on parole?

18 A No, I did not.

19 Q Had you ever had any contacts with Mr. Turner in
20 the past, any arrests that you were aware of?

21 A No, I had not.

22 Q This incident where Officer Flores and Officer Lara
23 were conducting this investigation had it ended when you
24 made contact with Mr. Turner?

25 A You would have to ask them.

26 Q Well, what was your understanding?

27 A They were talking to several subjects and Officer
28 Demarest was standing by also.

1 Q Did any of these officers, Officer Flores or any of
2 the other officers point to Mr. Turner and ask you to go
3 and make contact with him in any sort of investigative
4 capacity?

5 A No.

6 Q So you saw Mr. Turner with a Hispanic person with
7 the hood of a vehicle up; is that true?

8 A Yes.

9 Q Were they working on that trying to fix the engine
10 or what were they doing, if you know?

11 A It appeared they were.

12 Q So it didn't appear to you that they were trying to
13 break in to this vehicle?

14 A There was no criminal activity.

15 Q At all?

16 A No.

17 Q So you just went over to ask him a question?

18 A I did.

19 Q And what -- why did you feel they were in some sort
20 of distress or some sort of problems, some sort of -- why
21 did you go over and make contact with Mr. Turner?

22 A I wanted to contact them to see who they were, that
23 was it.

24 Q What were they doing that made you believe you
25 needed to contact them as a police officer?

26 A I didn't feel I needed to.

27 THE COURT: I'm sorry, what was that -- what was
28 the last?

1 THE WITNESS: I didn't feel that I needed to
2 contact them.

3 BY MR. KLOPFENSTEIN:

4 Q You didn't have any purpose to contact them?

5 A I just did a consensual contact.

6 Q Well, you testified that when you made contact that
7 was when you -- Mr. Turner stepped back and he said, why
8 are you talking to me?

9 A He -- I asked him a question, I believe I asked the
10 Hispanic male subject first where -- what room they were
11 staying in, at which point he replied, No. 10.

12 Mr. Turner, I asked him where he was staying, held
13 his arms at his side in very angry manner, demanded why.

14 Q Okay. So if I understand you correctly you didn't
15 suspect either one of these people to be involved in any
16 criminal activity, correct?

17 A No.

18 Q You just went up there because you felt that as a
19 police officer you could make contact with any person no
20 matter what they're doing day or night, would that be
21 true?

22 A No.

23 Q Okay. Well, why didn't you explain what exactly --
24 why you went and made contact with somebody that wasn't
25 doing anything criminal?

26 A Because of -- I have the right to.

27 MR. EICHELE: Objection, argumentative question, it
28 assumes legal conclusion.

1 THE COURT: I'm going to overrule it. You may
2 answer the question.

3 THE WITNESS: Can you repeat your question?

4 BY MR. KLOPFENSTEIN:

5 Q Why did you make contact with Mr. Turner when you
6 didn't suspect him to be doing anything criminal?

7 A Because they were in a public place within the city
8 of Woodland and I have the right to make a consensual
9 contact with anyone that is in a public place in the
10 performance of my duties.

11 Q So you made contact with Mr. Tur -- with the
12 Hispanic gentleman first and asked him where he was
13 staying and what -- referring to the Dunton Motel?

14 A I asked him where he was staying.

15 Q He said he was staying in Room No. 10?

16 A Yes, he did.

17 Q Did you ever verify if, in fact, he was telling the
18 truth, this Hispanic male?

19 A Yes.

20 Q Was he staying in Room No. 10?

21 A Yes.

22 Q Okay. Did he have a lease or some sort of rental
23 agreement where he could stay in Room No. 10?

24 A I did not investigate that.

25 Q Okay. And then you asked Mr. Turner where he was
26 staying and that's when he said, why are you making
27 contact with me?

28 A No, he did not ask me why I was making contact.

1 Q What did he say specifically?

2 A His specific remarks, exactly not all, but why do I
3 want to know where he was staying.

4 Q Okay. And you testified that he stepped back when
5 he did that and put his arms down by his side?

6 A Put his arms out.

7 Q Put his arms out?

8 A From his sides.

9 Q Okay. Did he strike --

10 A No, he did not.

11 Q -- you?

12 Today you are in a full uniform, is this a uniform
13 that you normally wear on patrol?

14 A It is.

15 Q And it identifies -- it has badges on each side,
16 says Woodland Police Department?

17 A It does.

18 Q You have a silver badge that says Woodland Police
19 Department?

20 A I do.

21 Q I see you have a walkie-talkie right on your --
22 right around your heart that you can use at any sort of
23 immediate problems, correct?

24 A I have hand-held radio.

25 Q Hand-held radio. You have a hand issued -- some
26 sort of revolver issued to you that you can use?

27 A I have a handgun.

28 Q Handgun. Were there other officers in the area at

1 the time?

2 A There was.

3 Q Three other officers?

4 A There was.

5 Q All in uniform?

6 A There were.

7 Q And is this when you asked him if he was on
8 probation or parole is this -- this is the question you --
9 after he said, why are you making contact with me?

10 A It is.

11 Q You asked him, are you on probation or parole?

12 A I did.

13 Q Why did you -- did you suspect him to be involved
14 in any sort of criminal activity at this point?

15 MR. EICHELE: Your Honor, I object at this point
16 he appears to be badgering the witness. He asks -- asked
17 this question four times slightly different. Officer has
18 answered it each time.

19 THE COURT: I'm going to overrule, allow this one
20 question.

21 Go ahead, Mr. Klopfenstein.

22 BY MR. KLOPFENSTEIN:

23 Q Did you suspect him to be involved in any criminal
24 activity when you asked him if he was on parole or
25 probation?

26 A No, I did not.

27 Q Now, at some point you determined that -- him to be
28 on parole; is that correct?

1 A He told me he was on parole.

2 Q Okay. He's on parole. He tells you he's on
3 parole?

4 A Yes, he did.

5 Q Are you aware of the conditions -- his parole
6 conditions?

7 A Yes.

8 Q You were aware of his parole conditions when you
9 made this search of Mr. Turner?

10 A Of his exact -- his personal or of parole
11 conditions?

12 Q His exact personal?

13 A No..

14 Q Personal parole conditions?

15 A I told you before I did not know him prior to my
16 contact. Therefore I could not know his parole
17 conditions.

18 Q You didn't think that was important to know those
19 conditions?

20 A If he's on parole he's searchable.

21 Q I see. Okay. That's your understanding of the
22 law?

23 A Uh-huh.

24 THE COURT: Yes.

25 THE WITNESS: Yes.

26 MR. KLOPFENSTEIN: Okay.

27 Q So then based on the fact that someone says
28 hypothetically they're on parole or probation not knowing

1 those conditions you feel you can search anybody at any
2 time?

3 A No.

4 Q Well, you just testified a minute ago that because
5 Mr. Turner was on parole you felt you could search him?

6 A I did.

7 Q And you didn't even know what the conditions of his
8 parole were?

9 A You just asked me if I could search someone on
10 parole or probation. Probation has terms that state if
11 they are searchable or not. Parole they are searchable.

12 Q They're absolutely searchable, that's your
13 understanding of the law?

14 A They are.

15 Q Okay. So to you there is a difference if someone
16 says they're on probation as opposed to being on parole,
17 there is difference in your mind in terms of someone being
18 searchable or not searchable?

19 A There is.

20 Q And you don't feel that you need to know -- just so
21 I'm clear, you don't feel you need to know the terms, the
22 conditions -- parole conditions in order to search a
23 parolee; is that right?

24 A If they're on parole they're searchable.

25 Q Okay. So I take it you searched him. Now, at some
26 point did you pull a Taser out?

27 A I did.

28 Q And did you Taser Mr. Turner?

1 A I did not.

2 MR. EICHELE: Object, not relevant, Your Honor.

3 THE COURT: How is it relevant, Mr. Klopfenstein?

4 MR. KLOPFENSTEIN: Well, I just -- it's relevant
5 to the police conduct that was going on at this time.

6 THE COURT: Sustained.

7 MR. KLOPFENSTEIN: Okay.

8 Q In order to search him you said he was agitated; is
9 that right?

10 A He was.

11 Q And in order to conduct this search did you have to
12 pull out your Taser?

13 A I don't use a Taser to conduct a search.

14 Q Okay. In order to subdue him to get him to a point
15 where you could handcuff him or control him, did you have
16 to use your Taser?

17 A I felt it was necessary for my safety that he
18 comply.

19 Q And that's when you pulled out your Taser?

20 A It was.

21 Q Did you Taser him?

22 A I did not.

23 Q Okay.

24 THE COURT: I thought we'd done that, I thought the
25 Court already sustained an objection to that, Mr.
26 Klopfenstein on that question.

27 So you see when I do that it means you can't ask
28 that question.

USE OF
SECTION
spending
OR D.A.
WAS NOT
AN E QUESTION

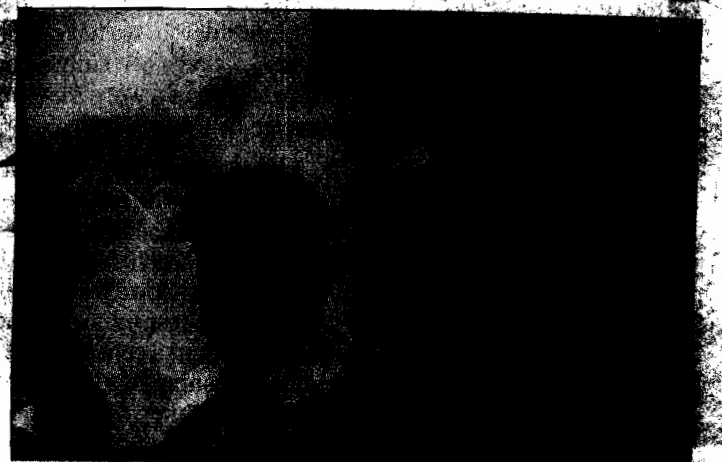
Pursuant to this Court's order, the California Attorney General proposes the following order:

[separate page "proposed order"]

As Deputy District Attorney Robert Trudgen (Trudgen) formerly represented Defendant Anthony Turner (Turner) in another action that may pertain to the instant proceedings, this Court makes the following orders with a goal toward constructing an ethical wall around Trudgen regarding his former representation of Turner:

1. That Trudgen continue to have no contact, regarding Turner, with any member of the Yolo County District Attorney's Office, or any other member of any office involved in the prosecution of Turner.
2. That Trudgen continue to have no contact, regarding Turner, with any member of any investigative officer team or staff involved in the prosecution of Turner.

The Hon. Steven Basha,
Judge of the Yolo Co. Superior Court



SUE COGNELL/ENTERPRISE

Marco Antonio Topete, flanked by two Yolo County sheriff's deputies, talks with his attorney, Deputy Public Defender Dean Johannison (wearing glasses), during a court hearing this morning. Topete is accused of killing Deputy Tony Diaz.

THE DAVIS FRIDAY, JUNE 27, 2008

enterprise

Trainers have a special bond with aging residents

Judges challenged

Attorney alleges collusion at court

By Lauren Keene
and Sharon Stello

ENTERPRISE STAFF WRITERS

DIAZ
Slain deputy

WOODLAND — Lawyers for the accused killer of Yolo County Sheriff's Deputy Jose "Tony" Diaz this morning filed a motion to recuse the

entire Yolo County bench from hearing their client's case.

Deputy Public Defender Dean Johannsson alleged that court operations were shut down for about a half-hour during Marco Antonio Topete's June 18 arraignment hearing so that sheriff's deputies, who provide security at the courthouse, could attend the proceeding.

"It shows judicial collusion on the part of the rest of the Yolo judiciary," Johannsson said today during

what was supposed to be a continued arraignment hearing for Topete.

Instead, the proceedings were brought to a halt until Judge David Rosenberg, who is presiding over the case, could issue a ruling on the motion. He set a decision date of July 3.

Topete's arraignment hearing came under fire last week after

See JUDGES, Page A9

THE DAVIS ENTERPRISE

FROM PAGE ONE

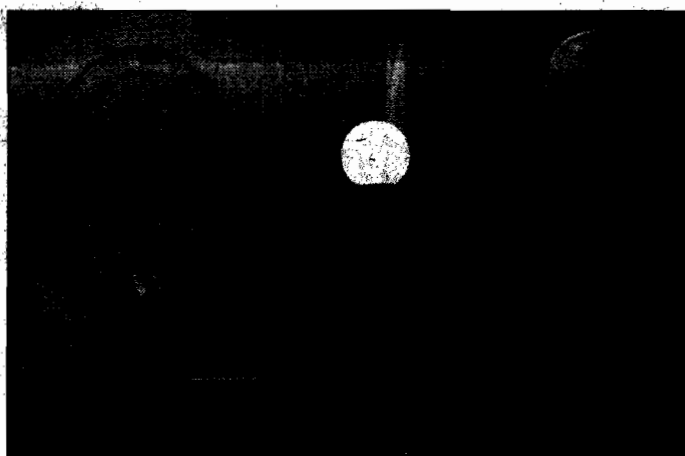
JUDGES: Civilian clothes OK'd for court

sheriff's deputies failed to unlock the court building's front door during the proceeding, preventing members of the public — including Topete's relatives and the media — from attending.

Instead, the courtroom was filled with law-enforcement officers and Diaz's family, who were allowed to enter the building through separate doors. Earlier this week, the court issued a report that faulted the Sheriff's Department for the incident.

Topete, 35, is accused of shooting Diaz in the chest area following a June 15 vehicle pursuit in Dunnigan. The charges against him include murder with four special-circumstance allegations that make him eligible for the death penalty.

He appeared in court today wearing a dress shirt, tie and slacks, following a decision Thursday by Rosenberg to allow Topete to wear civilian



SUE COCKRELL/ENTERPRISE PHOTO

Yolo County Superior Court Judge Dave Rosenberg asks a question of Deputy Public Defender Dean Johansson at this morning's hearing in Woodland.

clothing and appear unshackled during his pretrial court hearings where cameras are present.

Topete's attorneys had filed a pair of motions seeking the special conditions so that potential jurors in the case would not be prejudiced by his appearance.

Topete wore a jail-issued orange jumpsuit and bullet-

proof vest at Thursday's hearing, as well as at his arraignment last week.

Yolo County District Attorney Jeff Reisig and Assistant County Counsel Daniel Cederborg urged Rosenberg to allow continued use of restraints on Topete, citing his criminal history and the violent nature of the charges against him, for the safety of

sheriff's deputies who escort him to and from court.

Rosenberg responded that Department 9, where most of Topete's pretrial hearings will be held, provides ample security.

Diaz was remembered at a memorial service this morning at The Pavilion at UC Davis, which drew thousands of law enforcement officers and members of the public and included a huge motorcade from Woodland to Davis.

The public also is invited to attend a viewing for Diaz at 6 p.m. Monday at St. Peter's Church, 105 S. Second St. in Dixon. A Rosary will follow at 7 p.m. A Mass will begin at 10 a.m. Tuesday at the church, followed by burial at Silveyville Cemetery, 800 S. First St. in Dixon.

— Reach Lauren Keene at lkeene@davisenterprise.net or (530) 747-8048. Reach Sharon Stello at ssello@davisenterprise.net or (530) 747-8043. Comment on this story at www.davisenterprise.com

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